

A.No.9643 of 2019
in
C.S.No.748 of 2018

Dr.G.JAYACHADRAN, J.

Heard the learned counsel for the applicant/plaintiff and the learned counsel for the respondent/defendant.

2. This is an application to amend the cause title to the effect that the legal status of the defendant to be stated as partnership concern. Since the plaintiff at the time of filing of the suit was not aware of the constitution of the respondent/defendant, has omitted to mention as partnership firm. The status has come to know to the plaintiff only after written statement filed by the defendant and the new counsel entered appearance on behalf of the plaintiff. The said application is opposed by the respondent/defendant by way of counter, wherein, it is stated that it is not true to say the constitution of the defendant not known to the plaintiff. In fact, when the pre-suit notice was issued by the plaintiff, the defendant has replied by disclosing the constitution. Therefore, the plaintiff ought to have filed the suit by properly designating the defendant. Having failed to do so belatedly after examination of witness on the side of the plaintiff got completed and posted for defendant side witnesses, the present application is filed to harass the defendant. It is

further contended in the counter that this application is a malicious attempt to stop the respondent/defendant to carry on lawful business which they have been carrying on for so many decades.

3. The learned counsel appearing for the applicant would submit that the application under Order VI Rule 17 of C.P.C., to amend the copy can be filed even after commencement of the trial, if the Court concludes that in spite of due diligence, the party could not raise the matter (amendment petition) before the commencement of the trial. To buttress his submissions, the learned counsel would rely upon a Judgment of the Hon'ble Supreme Court particularly the observation of the Hon'ble Supreme Court in ***Salem Bar Association case***, which has dealt the impact of CPC amendment Act 2001.

4. While entertaining the application for amendment, after commencement of trial, the test should be whether the parties has come with clean hands and genuine cause or to prejudice or attempt to introduce new facts and whether the amendment application is to protract the proceedings or to fill up inherent lacunae in the pleadings. As far as the present case is concerned, the defendant is described as Sri Ganapathy Dairy and in the plaint, the plaintiff has reserved the right to amend the long and short cause title after getting details of the defendant constitution. No doubt the details

of the defendant constitution might have known to the plaintiff in the reply notice as well as in the written statement, but the amendment application is filed belatedly. But, whether for the said reason, the application should be rejected is the point for consideration.

5. When the defendant has actually participated in the trial, though not properly described this Court is of the opinion that by allowing the amendment application no prejudice will be caused to the defendant. Therefore, the amendment application is allowed. The plaintiff is directed to carry out the amendment and file APC by 04.02.2020.

6. Call the matter on 05.02.2020.

21.01.2020

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